



The Florida House of Representatives

Interim Project Report

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Committee on Ethics & Elections

Representative Ron Reagan, Chair

Report on the Restoration of Felons' Voting Rights in Florida

INTRODUCTION

On November 14, 2005, the United States Supreme Court refused to hear a case from Florida concerning the restoration of felons' voting rights.¹ By refusing to hear the case, the Court let stand Florida's 160-year old law creating a lifetime ban on convicted felons, unless those rights are restored by the governor. The following is a description of the clemency process in Florida and recent changes to that process.

CONSTITUTIONAL & STATUTORY PROVISIONS

Florida has a lifetime ban on voting for persons who have been convicted of a felony and have not had their civil rights restored. Article VI, section 4, Florida Constitution, provides:

- (a) No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability.

A statutory provision in the Florida Election Code addresses a person's eligibility to vote, if convicted of a felony. Section 97.041(2)(b) F.S., provides in part:

The following persons, who might be otherwise qualified, are not entitled to register or vote:

...

- (b) A person who has been convicted of any felony by any court of record and who has not had his or her right to vote restored pursuant to law.

In order to lift the ban on voting rights of convicted felons, these provisions would require modification or repeal. Repeal of the constitutional provision would require approval by the voters in a general election.

THE CLEMENCY PROCESS

The Florida Board of Executive Clemency (FBEC) governs the clemency process in Florida. The FBEC consists of the Governor and members of the Cabinet (the Attorney General, Chief Financial Officer, and Commissioner of Agriculture). Article IV, Section 8, Florida Constitution, permits the Governor, with approval by two members of the Cabinet, to grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.

¹ *Johnson v. Bush*, No. 05-212, 2005 WL 3027725 (U.S.) (Nov. 14, 2005).

The FBEC meets four times a year to consider cases that have been brought before it. Most cases are addressed without a hearing. The issues surrounding the cases have been studied by the Parole Commission's Clemency Administration Office, acting under law as the investigative arm of the FBEC. The Parole Commission staff investigates the issues surrounding each case and makes a recommendation on whether or not to grant some form of clemency. In many cases, the staff recommendation is a Restoration of Civil Rights (RCR) without a hearing. A list of these cases is submitted to the members of the FBEC who must vote to grant or not grant the RCR without a hearing.

Other cases are more complex and require a hearing before the FBEC. Parole Commission staff will research a case and make a recommendation that the RCR requires a hearing; the case will then be heard by the FBEC. The FBEC hears the merits of the case from interested parties and votes either for or against the pardon or RCR. It may also take the case under advisement and study it further before making a decision.

The FBEC has broad powers to grant or deny pardons or restoration of civil rights. The state constitution and state law govern the process, while leaving significant latitude on how to decide a case with the FBEC.

CHANGES TO THE PROCESS

Several changes have been made to the application process and rules governing the clemency process. Applicants for clemency may now apply online or submit a one page hard copy application² or they may call the

² The application can be accessed at <https://fpc.state.fl.us/Clemency.htm>

FPC staff and complete an application online. This has significantly reduced the time for processing paperwork by the FPC for RCR cases that do not require a hearing. The Department of Corrections also submits a list of potentially eligible felons to the FPC; this list gives the FPC a list from which to work, rather than having a person calling its office and applying. Because the changes in the application process and rule changes have made the clemency process more accessible, the higher volume of applications being received has resulted in a slowing down of the process.

Rule changes have also improved the processing time for RCR without a hearing. In 2004, the FPC made three rule changes, two of which affected the processing time for RCR without a hearing. The addition of Rule 5 in the Rules of Executive Clemency allows for a felon to be granted an RCR without a hearing after being arrest-free and crime-free for five years upon having completed all requirements of his sentence, except for those having been convicted of a 'dangerous crime.'³

The amendment to Rule 6 allows a person to receive an RCR without a hearing if he has been arrest-free and crime-free for 15 years. This allows for a quicker process time because an investigation for a potential hearing is unnecessary.

The third rule change requires felons to have paid full restitution before being granted an RCR. This has always been understood, but

³ The term 'dangerous crime' is defined in section 907.041(4)(a)1, 3-15, and 18-21, Florida Statutes; (ii) lewd, lascivious, indecent, or unnatural acts under Chapter 800, Florida Statutes; (iii) crime that required registration under the Florida Sexual Predators Act, section 775.21, Florida Statutes; (iv) sexual battery under Chapter 794, Florida Statutes; (v) DUI manslaughter under section 316.193, Florida Statutes; (vi) false imprisonment; or (vii) shooting or throwing missiles into or from a vehicle or dwelling.

was officially codified in the rules in December 2004.

OTHER STATES

All fifty states have statutes governing the civil rights of felons. In some states being a felon constitutes a loss of civil rights, in other states felons lose their rights and could potentially spend years working to get them back. Below is a summary of information from the National Conference of State Legislatures on the process for restoration of voting rights in the various states; there is also an attached chart detailing the information. (Please see attached chart from NCSL showing laws from all 50 states.)

There are various laws throughout the states concerning the restoration of civil rights. At the end of this report is a chart compiled by the National Conference of State Legislatures outlining the laws affecting the restoration of voting rights in the fifty states. What follows below is a summary of that chart.

A convicted felon's eligibility to vote is not affected in Maine and Vermont. Eligibility is also not affected in New York if convicted of a felony, but not sentenced to incarceration or if the sentence is suspended.

There are 13 states that have an automatic restoration of rights after release from confinement; after release, the felon may simply re-register to vote.

There are 14 states that have an automatic restoration of rights after completion of sentence that only requires the felon to vote. States that are not included in the 14 having automatic restoration are:

- Arizona and Maryland allow for automatic restoration only after the

first offense. (Arizona felons committing two or more offenses must apply to the courts for restoration. Maryland requires a pardon for felons committing two or more offenses.)

- Minnesota allows for automatic restoration only after a discharge of sentence.
- Nebraska felons can have voting rights restored after obtaining a "Warrant of Discharge" from the Board of Pardons. (A 'Warrant of Discharge' restores only the rights enumerated in the warrant.)
- North Carolina allows for automatic restoration only after a certificate showing an unconditional discharge is filed with the General Court of Justice within the appropriate county.
- New York allows for automatic restoration of rights for felons sentenced to incarceration upon completion of sentence or the expiration of the maximum time of the sentence.
- Oklahoma allows for automatic restoration only after a conviction has become final and the maximum time set forth in the sentence has expired. (e.g. If sentenced to 20 years, 20 years must elapse before rights can be restored without full pardon.)
- South Dakota allows for automatic restoration only after the Secretary of Corrections files with the sentencing court a certificate showing completion of one's sentence.
- Washington allows for automatic restoration only after a certificate of discharge is filed with the sentencing court by the Department of Corrections.

There are 9 states that require a pardon from the Governor for restoration of civil rights:

- Mississippi requires a pardon or a two-thirds vote of the legislature.
- In Maryland and Missouri if convicted of a crime relating to voting, voting rights cannot be restored by any means.
- Nevada requires felons to petition the State Board of Parole Commissioners, similar to Florida.
- Tennessee requires felons to petition the courts after completion of sentence.
- Delaware and Tennessee prohibit the restoration of rights for felons convicted of certain crimes.

SUMMARY OF PAROLE COMMISSION RESPONSE TO PROVISO LANGUAGE

The General Appropriations Act of FY 2005 – 2006 required the Parole Commission to respond to inquiries contained in the proviso language. The proviso requested:

(1.) A valid determination of the exact number of pending Restoration of Civil Rights (RCR) cases existing on July 1, 2005, along with a full explanation of the methodology used to determine the pending number of cases. Data must include total cases received for each of the past five years, the total number of cases processed for each of the past five years, and the total number of cases received or pending but not processed for each of the past five years;

(2.) A continuation plan including measures that continue to simplify application forms and processes by using readily available data from existing automated systems;

(3.) Identification of all existing resources, workload, job descriptions, and internal business procedures for clemency activities. This information must be reported in a manner that allows for isolation of resources allocated to the RCR process. The information must also be sufficient to account for each step in the 0.9 hour process to complete the review of RCR without a hearing; and

(4.) Proposed criteria, developed by case type, to use in defining and classifying case backlogs which shall be based upon a reasonable length of time for the normal processing of cases.

As of July 1, 2005, there were 20,376 clemency cases pending. The pending cases are a result of the prior year's pending cases that were not processed, plus any new cases that have not been processed. The numbers of received and processed cases are from the Commission's Performance-Based Budgeting database, and the Management of Application for Clemency database.

The number of applications for clemency has increased partially due to changes in the application process. Beginning with the rule changes in July 2004, applicants for restoration may call, send a letter, or apply online for restoration of civil rights. Electronic lists are provided by the Department of Corrections for felons that are potentially eligible for restoration.

The hard copy application has been redesigned to require less information. The requirement of certified copies of court documents has been eliminated along with

the mailing of the application to the sentencing Judge and State Attorney.

Numerous automated data systems are being utilized to research cases for felons potentially eligible for restoration without a hearing. The Commission is now using the Judicial Inquiry System (JIS); this web based inquiry system allows examiners to access the many different database systems. The Judicial Inquiry System can automatically generate correspondence to those determined ineligible for restoration without a hearing. The generated letter provides the petitioner instructions on how to proceed with the hearing process for the restoration of civil rights.

The clemency process represents 45% of the Commission's resources and workload. For fiscal year 2004-2005, there are 67 Full Time Employees (FTE) dedicated to clemency activity; the 2004-2005 fiscal year appropriation for clemency activity is \$4,247,173. RCR's without a hearing represented 41% of the clemency workload; those cases requiring a full investigations represented 59%.

In fiscal year 2003-2004, the processing time for RCR without a hearing was .9 hours and 20 hours for full investigations. The average time over two years to process RCR cases without a hearing was 1.54 hours. This was a reduction of one-half hour; the previous 2-year average was 2.04 hours.

Also, included in the report are job descriptions of various positions within the commission along with a flow chart showing the steps of the clemency process.

There are two steps in determining workload priorities. Workload priorities are set by an accepted formula, RCR cases that do not require a hearing, RCR cases with a hearing

requiring full investigations, and finally, full investigations for other forms of clemency, i.e., full pardons, and firearm authority. All cases are taken in the order in which they are received.

Workload priorities are also determined by the amount of time it takes to process cases, shortest amount of time (RCR cases at .9 hours) to longest amount of time (full investigations at 20 hours).

1. RCR cases received by e-application from the Department of Corrections that do not require a hearing.
2. RCR application cases that do not require a hearing.
3. RCR and Clemency/Pardon application cases that require a hearing and therefore a full investigation.

Also included in the FPC response are definitions and descriptions of the clemency process. This information is included in an OPPAGA issue paper.

PAROLE COMMISSION SUMMARY OF CASES

The large increase in clemency cases in fiscal year 2002 – 2003 is due primarily to a court case, *Fla. Caucus of Black State Legislators, Inc. v. Crosby*, 877 So. 2d 861 (Fla. 1st DCA 2004), that stemmed from the 2000 General Election.⁴ Settlement of that case required a review of all clemency cases filed 10 years prior to the lawsuit. It was found that many cases were not being properly reviewed for eligibility, so the FPC

⁴ Please see attached "Parole Commission Summary of Cases Table."

was required to review the prior 10 years of cases to determine eligibility.

CONCLUSION

The changes in the application process and the clemency rules have made significant alterations to the clemency process. While these changes have been helpful in reducing the amount of time spent on each case, the changes have also created a larger work load. The application process and time required to process applications have been

greatly reduced from prior years. However, due to greater accessibility to the clemency process, more cases are being submitted which has caused a stagnation of the clemency process. Governor Bush, at the December 6, 2005, meeting of the FBEC, announced that he was requesting 40 new positions and \$1.8 million in the upcoming budget to help reduce the backlog of cases. This could potentially go a long way in reducing the backlog of cases.

Prepared by Chris Shaffer.

PAROLE COMMISSION SUMMARY OF CASES TABLE

Restoration of Civil Rights without a hearing (as of June 30, 2005)					
RCR Cases	2000/2001	2001/2001	2002/2003	2003/2004	2004/2005
Pending July 1, 2005	0	6,437	38,227	43,335	14,769
Duplicates on List	0	0	(10,090)	0	0
Returned or Referred to CA	0	0	(2,645)	0	0
Adjustment Actual	0	0	0	(2,083)	0
New Cases Received	19,896	67,837	140,917	41,758	45,309
Processed During FY	(13,459)	(36,047)	(123,074)	(68,241)	(39,702)
Pending June 30, 2005	6,437	38,227	43,335	14,769	20,376

Voting Rights Restoration Process

Source: U.S. Department of Justice, December 2000;

Updated by the National Conference of State Legislatures, January 2002

	Restoration Process
Alabama	The right to vote may be regained only through a pardon.
Alaska	Automatically restored upon completion of sentence, probation and/or parole; felon must register to vote.
Arizona	1 st offense - rights are automatically restored; 2 nd and subsequent offenses - must apply to court for restoration. If felony convictions resulted in a prison sentence, felon must wait until two years after unconditional release from incarceration or completion of parole before felon can apply. If felony convictions resulted in a sentence of probation, felon may apply for restoration of voting rights immediately upon discharge from probation.
Arkansas	Automatically restored upon completion of sentence, probation and/or parole; felon must register to vote. Felons must provide evidence of their eligibility to vote after discharge of their sentence.*
California	Automatically restored upon completion of sentence, probation and/or parole; felon must register to vote.
Colorado	Automatically restored upon completion of sentence and/or parole; felon must register to vote.
Connecticut	Felon may regain the right to vote upon submission of written or other satisfactory proof that all fines in conjunction with conviction have been paid and that felon has been discharged from confinement or parole. Felon must

	submit this information to the office of the Registrar of Voters. Probationers automatically regain the right to vote.*
Delaware	<p>A person convicted of murder, manslaughter or any felony constituting a sexual offense or an offense against public administration involving bribery, improper influence or abuse of office, may not have their voting rights restored.</p> <p>Any other person who is disqualified as a voter because of a conviction of a crime shall have such disqualification removed upon being pardoned or five years after expiration of sentence, whichever may occur first. Expiration of sentence means satisfactory completion of imprisonment, probation and parole and satisfaction of all financial obligations required by the sentence, including restitution.</p>
D.C.	Automatically restored upon release from confinement; felon must register to vote.
Florida	Civil rights, including the right to vote, are suspended when a person is convicted of a felony. A felon may have his or her civil rights restored by obtaining a full pardon, conditional pardon, or restoration of civil rights from the Governor and Cabinet, acting as the Board of Executive Clemency.
Georgia	Automatically restored upon completion of sentence, probation and/or parole; felon must register to vote.
Hawaii	Automatically restored upon release from confinement; felon must register to vote.
Idaho	Automatically restored upon completion of sentence, probation and parole; felon must register to vote.

Illinois	Automatically restored upon release from confinement; felon must register to vote.
Indiana	Automatically restored upon release from confinement; felon must register to vote.
Iowa	Must obtain a pardon or a restoration of citizenship from the Governor.
Kansas	Automatically restored upon completion of sentence, probation and/or parole; felon must register to vote.
Kentucky	Must obtain a pardon from the Governor.
Louisiana	Automatically restored upon completion of sentence, probation and/or parole; felon must register to vote.
Maine	Eligibility to vote not affected.
Maryland	<p>A first time offender for theft or infamous crime, other than buying or selling votes, the right to vote is automatically restored upon completion of your sentence, including any probation or parole.</p> <p>If convicted of two or more such crimes, a person is not eligible to vote unless and until a pardon is obtained.</p> <p>If convicted of buying or selling votes, a person is permanently prohibited from voting in Maryland.</p>
Massachusetts	Automatically restored upon release from confinement; felon must register to vote.

Michigan	Automatically restored upon release from confinement; felon must register to vote.
Minnesota	If convicted of treason or of a felony, the right to vote is automatically restored upon discharge from sentence. Discharge occurs either by order of the sentencing court, following stay of sentence or stay of execution of sentence, or upon final expiration of sentence.
Mississippi	Right to vote may be restored by a pardon or an executive order issued by the Governor upon discharge from probation. The right to vote may also be restored by a two-thirds vote of the state legislature.
Missouri	Automatically restored upon completion of sentence, probation and/or parole; felon must register to vote; however, a person is forever disqualified from voting if convicted of a crime connected to the exercise of the right to vote.
Montana	Automatically restored upon release from confinement; felon must register to vote.
Nebraska	The right to vote is restored automatically two years after completion of sentence, including period of parole. Application must be made to the Nebraska Board of Pardons for the restoration of full civil rights.
Nevada	Felons who have completed probation may apply 6 months after the expiration of their term of probation to have their rights restored.* Felons who have completed parole or who have served their full sentence may immediately petition the State Board of Parole Commissioners who may petition the district court for restoration of civil rights. *
New	Automatically restored upon release from confinement; felon must register to

Hampshire	vote.
New Jersey	Automatically restored upon completion of sentence, probation and/or parole; felon must register to vote.
New Mexico	Automatically restored upon completion of sentence, probation and/or parole; felon must register to vote. *
New York	<p>If convicted of a felony and sentenced to incarceration, felon automatically regains the right to vote upon expiration of the maximum time to which he or she was sentenced, or upon discharge from parole, whichever occurs first.</p> <p>If convicted of a felony but not sentenced to incarceration, or if the sentence was suspended, felon's conviction does not affect the right to vote.</p>
North Carolina	<p>Automatically restored upon completion of sentence, probation and/or parole. For a North Carolina conviction, the agency having jurisdiction over a felon at the time he or she was unconditionally discharged is required to issue a certificate to the clerk of the General Court of Justice in the county where the felon was convicted, and that clerk shall then file the certificate with the original record at no fee. Once this is done, the felon can simply register and vote.</p>
North Dakota	Automatically restored upon release from confinement; felon must register to vote.
Ohio	Automatically restored upon release from confinement; felon must register to vote.
Oklahoma	Once a conviction has become final and the maximum time set forth in the felon's sentence has expired, his or her right to vote is automatically

	restored.
Oregon	Automatically restored upon release from confinement or completion of parole; felon must register to vote.
Pennsylvania	Automatically restored upon release from confinement; felon must register to vote; however, if a felon was not registered to vote at the time of his or her conviction, the felon may need to wait 5 years from the date of release from incarceration in order to vote.
Rhode Island	Automatically restored upon completion of sentence, probation and/or parole; felon must register to vote.
South Carolina	Automatically restored upon completion of sentence, probation and/or parole; felon must register to vote.
South Dakota	The right to vote is restored upon termination of a felon's sentence. When the sentence has been fully discharged, including parole, a felon should receive a certificate from the Secretary of Corrections stating that he or she has been restored to the full rights of a citizen. The Secretary should file a copy of the certificate with the sentencing court. After receiving this certificate the felon must register to vote.
Tennessee	<p>Persons convicted of murder, aggravated rape, treason, or voter fraud after July 1, 1986, or of rape after June 30, 1996, are ineligible to have their voting rights restored.</p> <p>For other felony convictions after June 30, 1996, a felon may seek restoration of voting rights after the maximum sentence imposed for his or her conviction has expired, or after the felon has been pardoned, by petitioning the circuit court of the county where the felon lives or was convicted.</p>

	<p>If a felon was convicted after July 1, 1986, but before June 30, 1996, of a felony other than murder, aggravated rape, treason, or voter fraud, a felon may request that either the board of probation and parole or the authority that supervised or incarcerated him or her during the sentence issue a Certificate of Restoration of Voting Rights. A felon is eligible to request this certificate after either being pardoned or after the maximum sentence which was imposed for the conviction has expired.</p>
Texas	<p>Automatically restored upon completion of sentence, probation and/or parole; felon must register to vote. Felons may also regain their voting rights if they have been granted a gubernatorial pardon or release from the resulting inability to vote.</p>
Utah	<p>Automatically restored upon release from confinement/completion of sentence; felon must register to vote.</p>
Vermont	<p>Eligibility to vote not affected.</p>
Virginia	<p>If convicted of a felony in Virginia, a felon must obtain a "removal of political disabilities" from the Governor in order to regain the right to vote. A felon is eligible to apply for the removal of political disabilities if he or she completed the sentence more than 5 years ago and if all court costs and restitution have been satisfied.</p>
Washington	<p>In order to regain the right to vote, a felon must have his or her civil rights restored. Civil rights are restored by the issuance of a certificate of discharge. When a felon has completed all of the requirements of sentence, the Department of Corrections notifies the sentencing court. The sentencing court then issues and provides the felon with a certificate of discharge, which will have the effect of restoring the right to vote. A felon must then register to vote, unless the crime was committed before 1984. Persons having been convicted of crimes before 1984 must apply for a Final Discharge and</p>

	Restoration of Civil Rights with the Washington Indeterminate Sentence Review Board.
West Virginia	Automatically restored upon completion of sentence, probation and/or parole; felon must register to vote.
Wisconsin	Automatically restored upon release from confinement/completion of sentence; felon must register to vote.
Wyoming	The right to vote may be regained either by a pardon or by restoration of civil rights. The Governor has the power both to pardon and to restore rights. The Governor may issue certificates of restoration of rights upon a person's completion of probation or expiration of the term of the sentence. A felon must submit a written application to the Governor in order to request a certificate restoring the right to vote.

*Legislation passed in 2001